

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

GARY L. THARES,

Plaintiff,

vs.

SO. DAK. DEPARTMENT OF
CORRECTIONS, IN ITS OFFICIAL
CAPACITY; MIKE LEIDHOLT, SECRETARY
OF CORRECTIONS, IN HIS OFFICIAL
CAPACITY; CATHERINE SCHLIMGEN,
ATTORNEY, SD DEPT. OF CORRECTIONS,
IN HER INDIVIDUAL CAPACITY;
MEDICAL STAFF, MIKE DURFEE STATE
PRISON, IN OFFICIAL CAPACITY; AND B.
MUDDER,

Defendants.

4:21-CV-04107-RAL

ORDER GRANTING PLAINTIFF'S
MOTION FOR LEAVE TO PROCEED IN
FORMA PAUPERIS AND REQUIRING
PLAINTIFF TO PAY AN INTIAL PARTIAL
FILING FEE

Plaintiff Gary L. Thares filed a pro se civil rights lawsuit under 42 U.S.C. § 1983. Doc. 1. Thares moves for leave to proceed in forma pauperis. Doc. 2. Under the Prison Litigation Reform Act, a prisoner who "brings a civil action or files an appeal in forma pauperis . . . shall be required to pay the full amount of a filing fee." 28 U.S.C. § 1915(b)(1). "When an inmate seeks pauper status, the only issue is whether the inmate pays the entire fee at the initiation of the proceedings or over a period of time under an installment plan." Henderson v. Norris, 129 F.3d 481, 483 (8th Cir. 1997) (quoting McGore v. Wigglesworth, 114 F.3d 601, 604 (6th Cir. 1997)). The initial partial filing fee that accompanies an installment plan is calculated according to 28 U.S.C. § 1915(b)(1), which requires a payment of 20 percent of the greater of:

- (A) the average monthly deposits to the prisoner's account; or

- (B) the average monthly balance in the prisoner's account for the 6-month period immediately preceding the filing of the complaint or notice of appeal.

Thares reported an average monthly balance for the past six months in his prisoner trust account of \$77.67, and average monthly deposits of \$89.17. Doc. 3 at 1. Based on this information, the Court grants Thares leave to proceed in forma pauperis, but he must pay an initial partial filing fee of \$17.83 (20 percent of his average monthly deposits). Thares must pay the initial partial filing fee of **\$17.83 by July 16, 2021**. Failure to pay the filing fee by July 16, 2021, will result in dismissal without prejudice of Thares's complaint.

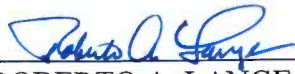
Therefore, it is hereby

ORDERED that Thares's motion for leave to proceed in forma pauperis, Doc. 2, is granted. Thares must make a payment of **\$17.83 by July 16, 2021**, made payable to the Clerk, U.S. District Court. If Thares does not pay the initial partial filing fee by July 16, 2021, his complaint will be dismissed without prejudice. The court will conduct a 28 U.S.C. § 1915A screening after Thares pays his initial partial filing fee. It is finally

ORDERED that the institution having custody of Thares is directed that whenever the amount in Thares's trust account, exclusive of funds available to him in his frozen account, exceeds \$10.00, monthly payments that equal 20 percent of the funds credited the preceding month to Thares's trust account shall be forwarded to the U.S. District Court Clerk's Office under to 28 U.S.C. § 1915(b)(1), until the \$350 filing fee is paid in full.

DATED June 16th, 2021.

BY THE COURT:



ROBERTO A. LANGE
CHIEF JUDGE